



5. Job Title: Self – Explanatory

Instructions for Section E

Information Relating to Work Location for the Nonimmigrants

1. City and State: Enter the city and state of the physical location where the work will actually be performed. See definition of "place of employment" in 20 CFR 655.175 and regulation concerning short-term placement in 20 CFR 655.735.
2. Prevailing Wage: Enter the prevailing wage rate. If the position is part-time, enter the prevailing wage on an hourly basis.
3. Wage is Per: Enter whether the prevailing wage is expressed in terms of per year, month, two weeks, week, or hour.
4. Wage Source: If the employer is relying on a wage determination obtained from a State Employment Security Agency, mark the SESA box. If the employer is using a collective bargaining agreement, mark that box. If the employer is using another source, mark the "Other" box and specify such other source in the space provided (question 6). This other source must be an appropriate survey. It may NOT be an established pay scale which has not been negotiated.
5. Year: Enter the 4 digit year in which the "other source" wage survey was published.
6. Other Wage Source: Enter the name of the published wage survey or other source used to determine the prevailing wage: e.g., "BLS Occupational Compensation Survey, Denver," "employer-conducted survey," etc. Any "other source" survey must meet all the criteria set forth in 20 CFR 655.731 (b) (3) (iii) (B) or (C), as appropriate.

Instructions for Section E - Subsection A

Information for Additional or Subsequent Work Location

This subsection is only necessary if filing for more than one location

If H-1B and H-1B1 nonimmigrants are to be employed concurrently or sequentially in more than one location, fill out Subsection A using the instructions listed above for Section E.

Instructions for Section F

Employer Labor Condition Statements

The employer must read and agree to statements (1) through (4) below and demonstrate that agreement by marking "Yes" in Section F of Form ETA 9035 or Form ETA 9035E, and by submitting and by signing the Form. The employer agrees to develop and maintain documentation supporting labor condition statements (1) and (4) as specified in 20 CFR 655.731 and 655.734, and to make this documentation available to DOL officials upon request. The employer also agrees to make available for public examination a copy of the labor condition application and necessary supporting documentation as specified in 20 CFR 655.760 within one (1) working day after the date on which the application has been filed with DOL. This documentation must be retained for public examination at the place of employment or the employer's principal place of business, as specified in Item H.

1. Wages: The employer attests that H-1B, H-1B1, or E-3 nonimmigrants will be paid wages which are at least the higher of the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for the occupational classification in the area of intended employment. By marking "Yes" in section F, the employer also



attests that it will pay these nonimmigrants the required wage for time in nonproductive status due to a decision of the employer or due to the H-1B nonimmigrant's lack of a permit or license. The employer further attests that these nonimmigrants will be offered benefits and eligibility for benefits on the same basis, and in accordance with the same criteria, as offered to U.S. workers. See 20 CFR 655.731.

2. **Working Conditions:** The employer attests that the employment of H-1B, H-1B1, or E-3 nonimmigrants in the named occupation will not adversely affect the working conditions of workers similarly employed. The employer further attests that H-1B nonimmigrants will be afforded working conditions on the same basis, and in accordance with the same criteria, as offered to similarly employed U.S. workers. See 20 CFR 655.732.
3. **Strike, Lockout, or Work Stoppage:** The employer attests that on the date the application is signed and submitted, there is not a strike, lockout, or work stoppage in the course of a labor dispute in the named occupation at the place of employment and that, if such a strike, lockout, or work stoppage occurs after the application is submitted, the employer will notify ETA within three (3) days of such occurrence and the application will not be used in support of a petition filing with INS for H-1B, H-1B1, or E-3 nonimmigrants to work in the same occupation at the place of employment until ETA determines the strike, lockout, or work stoppage has ceased. See 20 CFR 655.733.
4. **Notice:** The employer attests that as of the date of filing, notice of the labor condition application has been or will be provided to workers employed in the named occupation. Notice of the application shall be provided to workers through the bargaining representative, or where there is no such bargaining representative, notice of the filing shall be provided either through physical posting in conspicuous locations where H-1B, H-1B1, or E-3 nonimmigrants will be employed, or through electronic notification to employees in the occupational classification for which nonimmigrants are sought. The employer also attests that each nonimmigrant employed pursuant to the application will be provided with a copy (or original, as appropriate) of the certified Form ETA 9035, and provided with a copy of ETA 9035CP if requested. As stated above, for H-1B1 and E-3 nonimmigrants, the employer must provide the certified Labor Condition Application to the nonimmigrant, who must follow the H-1B1 or E-3 procedures of USCIS and the Department of State. This notification shall be provided no later than the date the nonimmigrant reports to work at the place of employment. See 20 CFR 655.734.

Please note that you have read and agree to these conditions by marking "Yes" in Section E of the Labor Condition Application for Nonimmigrants (Form ETA 9035).

Instructions for Section F-1 - Subsection 1

Additional Employer Labor Condition Statements – H-1B Employers Only

Please Note: The determination as to whether an employer is H-1B dependent is a function of the number of H-1B nonimmigrants employed as a proportion of the total number of full-time equivalent employees employed in the U.S. The following table can be used to determine whether the employer is or is not H-1B dependent:

An employer is H-1B dependent if it employs in the U.S.:	
Number of Full-Time Equivalent Employees (U.S. and H-1B workers):	Number of H-1B Nonimmigrant Employees:
1 to 25	8 or more



26 to 50	13 or more
51 or more	15% or more of workforce (U.S. and H-1B workers).

See 20 CFR 655.736 for more detailed guidance as to what constitutes an "H-1B dependent employer" or a "willful violator".

All H-1B employers are required to choose one of the following alternatives in order for an application regarding an H-1B nonimmigrant to be processed. Please note the alternative chosen by marking A, B, or C in section F-1 - Subsection 1 of the Labor Condition Application for H-1B nonimmigrants (Form ETA 9035 or Form ETA 9035E).

Alternative A - The employer is not H-1B dependent (as defined above) and has not been found to have committed a willful violation or a misrepresentation of a material fact during the five (5) year period preceding the date of this application (and after October 20, 1998). The employer agrees to maintain the documentation required by 20 CFR 655.736 where applicable.

If an employer chooses Alternative A and is or becomes H-1B dependent or was found, prior to the date of filing, to have committed a willful violation or a misrepresentation, the submitted labor application shall be deemed invalid and may not be used in support of a new petition or extension of a petition for an H-1B nonimmigrant. By choosing Alternative A, the employer also acknowledges that if it uses this application despite its invalidity, it is required to comply with the Additional Employer Labor Condition Statements in Section F-1 - Subsection 2.

Alternative B - The employer is an H-1B dependent employer and/or the employer has been found during the five (5) year period preceding the date of this application (and after October 20, 1998) to have committed a willful violation or a misrepresentation of a material fact.

If Alternative B is chosen, Section F-1- Subsection 2 of Form ETA 9035 or Form ETA 9035E MUST be filled out.

Alternative C - The employer is an H-1B dependent employer and/or the employer has been found during the five (5) year period preceding the submittal date of this application (and after October 20, 1998) to have committed a willful violation or a misrepresentation of a material fact, BUT the employer will use this labor condition application ONLY in support of petitions or extensions of status for exempt H-1B nonimmigrants who will receive wages at a rate equal to at least \$60,000 per year, or have attained a master's degree (or equivalent or higher degree) in a specialty related to the employment. The employer also agrees to maintain documentation required by 20 CFR 655.737.

By Choosing Alternative C, the employer acknowledges that if it uses this application in support of a petition or extension of a petition of an H-1B nonimmigrant who is not exempt, it is required to comply with the Additional Employer Labor Condition Statements in Section F-1 - Subsection 2 with respect to all H-1B nonimmigrants supported by this application.

Instruction for Section F-1 - Subsection 2 Additional Employer Labor Condition Statements

All employers (1) that are H-1B dependent (as defined above) and/or (2) that have been found to have committed a willful violation or a misrepresentation of a material fact during the five (5) year period preceding the date of this application (and after October 20, 1998), must read and agree to statements (A) through (C) below and demonstrate that agreement by marking "Yes" in Section F-1- Subsection 2 of Form ETA 9035 or Form ETA 9035E and by submitting and by signing the Form. The employer agrees to develop and maintain documentation supporting labor



condition statements (A), (B), and (C) as specified in 20 CFR 655.738 and 655.739 and to make this documentation available to DOL officials upon request. The employer also agrees to make available for public examination a copy of the labor condition application and necessary supporting documentation as specified in 20 CFR 655.760 within one (1) working day after the date on which the application has been filed with DOL. This documentation must be retained for public examination at the place of employment or the employer's principal place of business as identified in Item B. The employer agrees:

- (A) Displacement: The employer will not displace any similarly employed U.S. worker within the period beginning 90 days before and ending 90 days after the date of filing a petition for an H-1B nonimmigrant supported by the application. See 20 CFR 655.738.
- (B) Secondary Displacement: The employer will not place any H-1B nonimmigrant employed pursuant to this application with any other employer or at another employer's worksite UNLESS the employer applicant first makes a bona fide inquiry as to whether the other employer has displaced or intends to displace a similarly employed U.S. worker within the period beginning 90 days before and ending 90 days after the placement, and the employer applicant has no contrary knowledge.

If the other employer displaces a similarly employed U.S. worker during such period, the displacement will constitute a failure to comply with the terms of the labor condition application and the employer applicant may be subject to civil money penalties and debarment. See 20 CFR 655.738.

- (C) Recruitment and Hiring: Prior to filing any petition for an H-1B nonimmigrant pursuant to this application, the employer took or will take good faith steps meeting industry-wide standards to recruit U.S. workers for the job for which the nonimmigrant is sought, offering compensation at least as great as required to be offered to the H-1B nonimmigrant. The employer will (has) offer(ed) the job to any U.S. worker who (has) applied and is equally or better qualified than the H-1B nonimmigrant. See 20 CFR 655.739.

This labor condition statement "C" does not apply to the employment of an H-1B nonimmigrant who is a "priority worker" (defined as a person with extraordinary ability, or outstanding professors or researchers, or certain multi-national executives or managers) within the meaning of Section 203 (b)(1)(A), (B), or (C) of the Immigration and Nationality Act, 8 U.S.C. 1153.